D.B.CIVIL SPECIAL APPEAL NO.775/2004
Anil Kumar Pareek & Ors.
Vs.
The Chairman Raj.Rajya Vidyut Vitran Nigam Ltd. & Ors.

DATE OF ORDER:28.1.2005

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE KRISHAN KUMAR ACHARYA

Mr.Sachin Acharya, for the appellants

We have heard the learned counsel for the appellants and perused the order of the learned Single Judge dated 6.10.2004.

The father of appellants Anil Kumar and Sunil Kumar namely Ghanshyam died on 6.10.2003. Thus an application was filed by the appellants alongwith Smt.Suman the wife of the deceased for appointment on compassionate ground. As the application was rejected by the respondents, the appellants approached to this Court by way of a petition under Article 226 of the Constitution of India. The learned Single Judge by the impugned order rejected the petition so far as it relates to the prayer for compassionate appointment is concerned, however, issued notice to the respondents on the question of terminal benefits payable consequent upon the voluntary retirement of the deceased Ghanshyam Pareek. Thus, while the petition is pending before the learned Single Judge the instant appeal has been preferred against part of the order refusing the prayer with respect to issuing direction to the respondents for appointment on compassionate ground.

It is submitted by the learned counsel that by the impugned order of the learned Single Judge, a difficult situation has arisen inasmuch as if the appellants wait for decision of the writ petition on other issue the challenge of part of the order refusing to grant prayer with respect to compassionate appointment will

become barred by limitation. In case of challenge their prayer in the writ petition shall stand severed inasmuch as while they will have to plead for compassionate appointment by way of appeal before the Division Bench for other relief before the learned Single Judge.

Having heard the learned counsel for the appellants, we are of the view that the course adopted by the learned Single Judge in dismissing the writ petition in part cannot be upheld. Rule 375-A of the Rajasthan High Court Rules provides for application of **rule nishi**. Rule 376 speaks of notice. The provision provides that if the court does not find sufficient reason to admit the application it may reject. When the application is not so rejected, notice thereof shall be served on all persons affected by it. Thus, under the Rules a court can either admit or reject the petition. There is no provision for dismissing the petition in part at the admission stage. There is of course a practice of issuing notice before admission. There is nothing wrong with such a practice. While considering the provision of Order 41 Rule 11 C.P.C. the majority of the High Courts in the country have taken a view that an appeal can be dismissed or admitted as a whole. The Court cannot admit only a part of it and dismiss the other part. Rule 12(1) of Order 41 provides that when appeal is not dismissed the court shall fix a date for hearing of the appeal. A Full Bench of the Madras High Court in Vattipalle Eswariah vs. Vattipalle Rameshwarayya reported in AIR 1940 Madras page 483 after considering the various decisions held that there is nothing in either rule which suggests that the court may admit the appeal in part. The court dissented with the view expressed by the Bombay High Court. Having gone through both the judgments we are respectful in agreement with the view expressed by the Madras High Court. The Full Bench of the Madras High Court after referring to Rule 12 & 11 of Order 41

C.P.C. held as follows:-

> "By virtue of R.11 the Appellate Court may dismiss the appeal without serving notice on the respondent but if it does not dismiss the appeal summarily, it must, by virtue of R.12(1), fix a day for hearing `the appeal'. There is nothing in either rule which suggest that the Court may admit the appeal in part. There are only two courses open to the Court namely to dismiss or admit the appeal as a whole."

The Court may admit an appeal or a petition on a limited ground, but at the time of final hearing, it will be open for the parties to address on all the grounds; except in a case where the party has cautiously abandoned the ground and the same has been recorded at the time of admission. Thus, we are of the view that the learned Single Judge has committed an error in dismissing the writ petition in part while issuing notice to the respondents on other grounds.

Consequently, the special appeal is allowed. The order of the learned Single Judge so far as it relates to rejecting the prayer with respect to appointment on compassionate ground is set aside. The writ petition pending before the learned Single Judge shall be heard on all the grounds irrespective of the fact that the notice has been issued for the limited prayer.

(KRISHAN KUMAR ACHARYA) J. **(N.N.MATHUR) J.**

BKS/-